IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5640 of 2007()

CRIME NO. 187/07 OF KEEZHVAIPUR POLICE STATION

PETITIONERS/ACCUSED NO.1 & 2

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1. SHINU JACOB, AGED 35 YEARS,
S/O.P.V.JACOB, VATTASSERIL POICUDIYIL HOUSE,
CHENGAROOR P.O., MALLAPPALLY TALUK,
PATHANAMTHITTA DISTRICT.

2. GINU P.JACOB, AGED 28 YEARS,
S/O.P.V.JACOB, VATTASSERIL POICUDIYIL HOUSE,
VAIPUR P.O., ANIKAD VILLAGE, MALLAPPALLY TALUK,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.JOSEPH GEORGE

RESPONDENTS: STATE

THE STATE OF KERALA,
REP. BY THE S.I OF POLICE,
KEEZHVAIPUR POLICE STATION, BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5640 of 2007

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Dated this the 1st day of October, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether there are three named accused and two others. There are two injured, who had suffered injuries. The petitioners face allegations, inter alia, for the offence punishable under Section 308 I.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There is a counter case. Both the petitioners have suffered injuries in the said attack. They are not the aggressors, but innocent victims of aggression, submits the counsel. Allegation under Section 308 I.P.C. has unnecessarily been included against the petitioners to vex and harass them. In the counter case, Crime No. 188 of 2007, the offence alleged is only under Section 324 I.P.C. The petitioners have suffered injuries as can be seen from the wound certificate in the counter case. The

police is helping the real aggressors and proceeding vexatiously against the petitioners. They may be granted anticipatory bail, it is prayed.

2. The learned Prosecutor opposes the application. The case diary in both the crimes are made available for my perusal. The relevant details are read over to me by the learned Prosecutor. The allegation in this crime is that the petitioners had trespassed into the residential compound of the defacto complainant and attacked them. In the counter case the allegation is that the incident took place in the road in front of the house of the defacto complainant Dangerous weapons are seen used. The weapons are not recovered yet. The nature of the injuries suffered by the victims in this case clearly show that serious injuries have been suffered. Sword is the weapon allegedly used. The learned Prosecutor submits that grant of anticipatory bail to the petitioners would frustrate the interests of a proper, efficient and expeditious investigation. In these circumstances it is prayed that the extra ordinary equitable discretion under Section 438 Cr.P.C. may not be invoked in favour of the petitioners.

3. I have considered all the relevant inputs. I shall avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I am satisfied that

there are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. I particularly take note of the fact that the weapon of offence - swords - have not been recovered. Though it is true that the petitioners also appear to have suffered some injuries, in the totality of circumstances I am satisfied that this is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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